

PROPOSED CHANGES TO LOCAL RULES EFFECTIVE JANUARY 1, 2007

DIVISION I GENERAL AND ADMINISTRATIVE:

Rule 1.2.2 Departments, Divisions of the Court & Venue

C. Except as set forth otherwise below or elsewhere provided in these rules, venue for all cases will be according to the zip codes found in ~~Appendix I-A.~~ **on the Court's website at www.sdcourt.ca.gov.**

D.5. If a case primarily involves construction defect claims, the case must be filed in the Central Division (Hall of Justice) **through the court approved e-filing vendor,** and will be assigned to a judge designated to hear construction defect cases.

Appendix I-A to be deleted.

DIVISION II CIVIL:

Rule 2.1.14 Structured/Conditional Settlements, Taking Matters Off Calendar

Upon conditional settlement of a case, parties must notify the court as follows:

A.

B. Removal of pending matters from the court calendar may be effected by telephone, in the discretion of the court, if:

1. There are no unrepresented litigants; and
2. All unserved parties or parties not participating in the settlement will be dismissed.

Trials may be taken off calendar by telephone if all of the above conditions are met and the **dismissal of the entire action will be filed according to the terms of the settlement** trial date is not more than 365 days after the date the original complaint was filed. Otherwise, the parties must appear ex parte.

Appendix B - The last sentence of E is incomplete and should be stricken; in the example of "Exhibit Index," change "date sub'd" to "date id'd."

DIVISION III CRIMINAL:

Rule 3.2.2 Additional Requirements – Special Motions

C. Suppression Motions

5. Motions Made in All Other Cases.

a. Defendant must specify the precise grounds for suppression of the evidence, including the inadequacy of any justification for the search and seizure. If defendant's motion alleges the lack of a warrant as the sole basis for suppression, any opposition filed by the People should specify the justification for the warrantless search. The defendant should then file a reply specifying the inadequacies of the justification. ~~However, absent a reply, the prosecution retains the burden of proof to establish its justification.~~ The reply brief must be filed and personally served at least two court days prior to the hearing. The raising of new issues in the reply may constitute good cause for continuance to permit the prosecution to prepare for the hearing.

DIVISION IV PROBATE:

4.3.2 Filing Documents for Calendared Matters.

~~**C. Motions** Filing and service of Motions are governed by Code of Civil Procedure section 1005. Section 4.5.1 subdivision B, herein, does not apply to Law and Motion Practice. Law and Motion Practice is subject to California Rules of Court Division II.~~

4.6.1 Availability of Probate Examiner's Notes and Clearing of Defects.

G. Supplements which cure defects do not require additional notice. Amendments, and Amendments to pleadings require additional notice. See California Rules of Court, rule 7.53.

Rule 4.7.5. E

E. The court requires notice to all parties entitled to notice no later than 10:00 a.m. the court day preceding the hearing. Every ex parte application must be accompanied by a written declaration of such notice or of the reason it was not given as required by CRC 379(a) and (e). An ex parte application must also include a declaration in support of the application and a memorandum of points and authorities.

4.7.9 Tentative Rulings. This rule is in the wrong chapter. It will be moved to Chapter 23 and numbered 4.23.8. No other changes.

4.7.10 Bonds; Additional Bond

A. In a matter where bond has previously been posted, there must be included in any current account a separate paragraph setting forth the total bond posted, the appraised value of personal property and real property subject to disposition without court approval or confirmation, the estimated annual income from real and personal property and a statement of any additional bond thereby required.

B. Conservators or guardians are required to seek ex parte authority to increase the amount of bond whenever the conditions of Probate Code section 2320.1 are met, and may not defer a request for such increase to a current account.

4.11.7 Petition for Authority to Retain an Attorney.

C. The Petition must be accompanied by a declaration by counsel detailing why the fees are properly a charge against the estate or trust, rather than a personal charge against the Petitioner. See *Whittlesey v. Aiello* (2002) 104 Cal.App.4th 1221 and *Terry v. Conlan* (2005) 131 Cal.App.4th 1445.

NEW RULE: 4.11.9 Substituted Judgment and Community Property Transactions

Absent good cause, an attorney, or a guardian ad litem, must be appointed for the Conservatee or incapacitated spouse in all proceedings pursuant to Probate Code §2580, et seq., and §3100, et seq. The attorney, or guardian ad litem, shall include in their report to the

court recommendations, if appropriate, relative to the ultimate testamentary disposition of the involved assets.

Rule 4.13.5 Commissions on Sale of Real Property

- A. In all cases, a reasonable broker's commission will be determined by the court at the time of confirmation and must be paid from proceeds of the sale confirmed by the court. The court may consider current community practices and standards in making its determination. The court may **not** allow a commission **in excess** of five percent (5%) ~~commission~~ on improved property or 40 ten percent (10%) on unimproved property absent good cause shown for a larger commission.

4.18.2 Temporary Conservatorships

B. The court will not consider the appointment of a temporary conservator ex parte and will set the petition for hearing with a five day notice requirement unless proper showing is made that:

(1) ~~An immediate necessity exists~~ **Good cause and an immediate necessity is affirmatively shown in a declaration containing competent evidence based on personal knowledge; and**

(2) The proposed Conservatee is present; the proposed Conservatee is hospitalized, **has notice of the ex parte hearing and its purpose**, and cannot attend; evidence is presented that the proposed Conservatee has notice of the ex parte hearing and its purpose and cannot appear; ~~the proposed Conservatee is incapable of understanding notice; or,~~ **in appropriate circumstances where capacity is not an issue**, the proposed Conservatee has consented and waived notice. Allegations of medical inability or lack of capacity to attend must be supported by a physician's declaration.

(5) Unless good cause is shown, the report of ~~the~~ a court appointed attorney is on file.

(6) **Absent good cause, 24-hour notice has been given to the proposed Conservatee's spouse or domestic partner, and all relatives within the second degree.**

(7) **In matters where the application is made primarily to make health care decisions a declaration is on file by Petitioner and Court Appointed counsel setting forth reasons why Temporary Conservatorship is more appropriate than proceeding under Probate Code section 3200 et seq.**

4.18.3 Petition for Appointment of Conservator

I. When the Petitioner, or the proposed Conservator, also serves as the Trustee of a Trust in which the Conservatee has a beneficial interest, the existence of the Trust, and the Petitioner or proposed Conservatee's status and interest therein must be disclosed in the petition.

J. The Petition for Conservatorship must state, with specificity, evidence to support a finding that Petitioner has standing pursuant to Probate Code section 1820. The court generally considers an "interested person" and/or "friend" to include the proposed conservatee's physician, accountant, stockbroker, neighbor, or other such acquaintance. Probate Code §1820(a)(5). Where Petitioner's relationship to the proposed conservatee may not confer standing sufficient to meet this criteria, notice of the proceedings shall be given the Public Guardian.

4.18.4 Registration of Private Professional Conservators

A. Registration. A private professional conservator, ~~or private professional~~ guardian, **or trustee** must be registered ~~per~~ **pursuant** to Probate Code section ~~2340~~ 2344 before the court will appoint such person as conservator, ~~or~~ guardian, **or trustee.**

B. Administration. ~~Registration will be handled by the Probate Division per the instructions available from that department. The instructions and two fingerprint cards may be obtained from Probate Examining in either Vista or San Diego by any person who needs to register.~~

Appropriate forms for registration, including instructions and fingerprint cards, may be obtained from the business office in Central and North County.

C. Failure to Register. Upon review of any conservatorship records, if it is determined that any person qualifies as a private professional conservator or private professional guardian and has not registered, ~~the court will require such person to immediately register per Probate Code section 2344 and may suspend powers of that person if they do not register,~~ **that individual will be removed by the court pursuant to Probate Code section 2851 unless the court finds reasonable grounds not to do so.**

D. Annual Information Statement. The Annual Information Statement **and Declaration of Minimum Qualifications** which must be filed each year by each private professional conservator, **guardian, or trustee** ~~or private professional guardian~~ is highly confidential and available only to the court personnel who have a need to know. None of the information will be given out to any other person.

E. Resignation. Any professional conservator, guardian, or trustee who submits a resignation to the court must include with that resignation the reason therefore so that the notification required by Probate Code section 2852(b) may be given.

4.18.5 Investments by Conservator

C. A conservator may continue managing investments specified in Probate Code section 2459(b) which pre-existed the conservatorship, but may not make additional investments without court authority. A conservator may petition the court for instructions and authority to make a specific investment, including investments in Certificate of Deposit Account Registry Service (CDARS.)

4.18.18 Notices

C. In circumstances where the Conservatee does not have a spouse or domestic partner, or such person is incapacitated, notice must be given to all relatives within the second degree.

New Rule 4.20.1: General

In all trust matters where an issue involves the interpretation of or change to the trust, the party seeking an interpretation or change to the trust shall lodge a copy of the trust with the court. By ex parte application, a party may seek to limit the scope of the lodgment.

And renumber current rule 4.20.1 – 4.20.5

Rule 4.20.4.2 C

Unless the testator provides otherwise in the will, or the court specifically orders otherwise, a trust created by will executed on or after July 1, 1977, is not subject to the continuing jurisdiction of the court and the court will require an accounting and report only when the same has been requested by someone beneficially interested in the trust.

Rule 4.20.2 3 Petitions to Determine Title in Trust Matters (Probate Code Section 850 – *Heggstad*)

In trust matters filed with the court to determine the title to property under Probate Code section 850, the following allegations are required to be set forth in the petition:

- A. The vesting of ~~the~~ each asset at all relevant times;
- ~~B. Evidence of any transactions indicating the settler intentionally removed the asset from, or added the asset to, the trust;~~
- B. Evidence that each asset was placed in trust;
- C. Evidence of every transaction affecting title to each asset in question during the relevant time.
- D. Where a transaction takes legal title to an asset out of the trust or occurs when title is not held by the trustee, evidence to overcome the inference that the Trustor intended that the transaction be considered a non-trust transaction.
- ~~G. E.~~ E. The value of the each asset to be transferred.

Rule 4.20.6.D Special Needs Trusts

A Special Needs Trust or Trust brought under the jurisdiction of the Probate Court will be assigned a new Probate case number and set for hearing. First appearance fees will apply. Any further trust proceedings and bonds must be filed under the new Probate case number. Petitioner will include a copy of the Special Needs Trust and the order establishing the trust with the petition which opens the new Trust case.

4.20.7 Fees and Commissions in Trusts

A. Trustees. A separate declaration setting forth the information required by California Rules of Court, rule 7.756 must accompany any request for approval of fees and may not be included in the body of the Petition. The Trustee must include the hourly rate upon which the fee request is based. Institutional Trustees seeking approval of fees premised on fee schedules must also submit their published fee schedule for the period involved.

B. Attorneys. Attorneys' fee requests must comply with California Rules of Court, rule 7.702.

Rule 4.21.1. Withdrawal of Counsel of Record

Add new introductory paragraph:

The following provisions apply to attorneys appointed by the court to serve as appointed counsel and guardians ad litem and also attorneys for guardians, conservators, personal representatives in estates, and trustees of trusts under court supervision.

Rule 4.21.6

C. The court will not grant a petition by the process of redacting or amending the underlying proposed petition.

4.21.8 Sanctions. MOVE and RENUMBER, and AMEND title to Chapter 2:

PLEADINGS: FORM AND FILING; SANCTIONS

~~4.21.8~~ 4.2.3 Sanctions.

[restate existing 4.21.8 at the new paragraph 4.2.3]

Rule 4.22.5 Determination of Contested Matters

E. EADACPA Complaints. When filing a civil action citing the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) involving an individual whose estate or person is under conservatorship, refer to rule 2.4.9 for procedural guidelines.

~~E.~~ **F. Other Procedural Orders.** If none of the foregoing procedures are appropriate for the matter before the court, the court may make any other procedural orders the court deems appropriate.

Rule 4.22.12 [Reserved for future use.]

~~ADR and Mediation Statement of Purpose~~

~~Contested estate, trust, conservatorship and other matters covered by the Probate Code are uniquely appropriate for alternative dispute resolution and supervised mediation in the interests of prompt, efficient and economical dispute resolution. Therefore, the court adopts the within Probate Code Mediation Program, which must be subject to the following special rules. Except to the extent otherwise specified, all other provisions of Division IV, Section One of the San Diego Superior Court Rules must apply to matters subject to this mediation program. The rules set forth below must be integrated into and must be a part of the rules relating to contested matters in probate.~~

DIVISION V – FAMILY:

CHAPTER 1 GENERAL

Rule 5.1.7 Pager or Cellular Telephone Requirement

Every self-represented party and every attorney of record must list an active pager or cellular telephone number (in addition to an office or home telephone number) on the first page of any pleading filed with the Family Law Division of the Court if the listed office or home telephone number is not normally answered by someone who reasonably can be expected to know the location of the self-represented party or attorney during the hours of 8:30 a.m. and 12 noon, and 1:00 p.m. to 5:00 p.m. Monday through Friday.

Rule 5.2.2 Alternative Dispute Resolution

The Family Law Act and the California Rules of Court encourage Alternative Dispute Resolution of Family Law Matters. The Family Law Court promotes and encourages the use of mediation,

arbitration, Collaborative Family Law, a private judge (Temporary Judge) and, when appropriate, judicial case management as methods of Alternative Dispute Resolution in Family Law cases.

A. **Mediation or Arbitration**

B. **Collaborative Family Law**

4. The designation of a case as a Collaborative Family Law Case is completely voluntary and requires the agreement of all parties. The Collaborative Family Law Case designation will be removed by the Court upon **the written** stipulation of the parties or upon the filing **and service of a Termination Election** indicating a party's desire to terminate the Collaborative Family Law process. **Upon the filing of a Termination Election, the clerk shall schedule a Case Classification Conference and notify the parties thereof.**

Rule 5.2.7 Case Management Conference (CMC)

A. Attendance at Conference. Parties must be present at the Case Management Conference (CMC) unless represented by counsel, in which case, counsel must appear. The parties or the attorneys must be fully prepared to discuss the timetable for resolution and be sufficiently familiar with the facts of the case so that the Court may make the orders set forth in B, below. Any attorney making a special appearance for counsel of record must have actual knowledge of the facts and procedural history of the case.

B. Orders. The Court may make the following orders at the CMC:

1. Set a Mandatory Settlement Conference or set a trial date for short cause matters (~~i.e., those cases which will take no more than 3 hours to try~~) upon confirmation that all first paper fees have been paid.
2. Set a date for the exchange of Final Declarations of Disclosure and the filing of proofs of service, **consistent with the applicable provisions of the Family Code and the Code of Civil Procedure.**
3. ~~Set a discovery cut-off date.~~ **Establish a plan for the completion of discovery, consistent with the applicable provisions of the Family Code and the Code of Civil Procedure.**
4. Set a date for the **preliminary** exchange of expert witness information, **consistent with the applicable provisions of the Family Code and the Code of Civil Procedure.**
5. Set a Family Court Services (FCS) date in cases where custody/visitation is at issue and no evaluation or private mediation is pending or completed.
6. ~~Resolve selection of joint experts.~~ **Address the selection of joint experts.**
7. ~~Resolve appointments of Special Master requests.~~ **Address requests for appointment of Special Master** made by stipulation pursuant to Code of Civil Procedure section 639 and California Rules of Court, rules 244.1 and 244.2.
8. Determine any issues to be bifurcated.
9. Set a date for the exchange and filing with the Court of **a joint the Family Law** CMC Questionnaire which includes a list of settled issues and a list of issues to be litigated.

~~Absent leave of court, a party may not present an issue for trial that was not set forth in the CMC list of issues to be litigated. **See form at Appendix K.**~~

10. Set an MSC after counsel, or ~~unrepresented~~ **a self-represented** party, certifies that all first paper fees have been paid, all discovery is **substantially** complete, no law and motion matters are pending or anticipated, and all expert reports have been exchanged. The Court, in its discretion, may set an MSC without these certifications. If an MSC is unable to proceed because counsel or a party has improperly certified the case, the matter will be returned for another CMC before the assigned judge, who may impose monetary sanctions against counsel or a party for improperly certifying the case as being ready for the MSC.
11. Any other orders the Court deems appropriate for the expeditious resolution of the case, including setting another CMC.

Rule 5.2.8 Mandatory Settlement Conference

B. Attorney Participation on the Settlement Conference Panel.

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The minimum qualifications for service on *any* settlement conference panel is as follows:

1. Admission to the State Bar of California for at least 10 years before appointment,

Additional ~~The~~ minimum qualifications for service on a settlement conference panel hearing most cases are:

1. Certified Family Law Specialist; or
2. **10** ~~7~~ years of legal practice, of which at least 75% is in family law; and
3. Attendance at the CFLS-sponsored settlement conference seminar; or commitment to attend the CFLS-sponsored settlement conference seminar to be presented or a comparable seminar or listen to the tapes from the seminar; AND
4. Approval of the Supervising Judge of the Family Law Courts.

~~The~~ **Additional** minimum qualifications for service on a settlement conference panel hearing more complex cases are:

1. Certified Family Law Specialist; or
2. 15 years of legal practice of which at least 90% is in family law; AND
3. Approval of the Supervising Judge of the Family Law Courts.

CHAPTER 2 CASE FLOW MANAGEMENT

Rule 5.2.9 Telephonic Appearances in Family Court.

A. Appearance by Telephonic Conference Call.

1. A self-represented party or an attorney of record may appear by telephonic conference call in the following proceedings in the Family Law courts:

a. Case Classification Conferences (CCC);

b. Case Management Conferences (CMC); and

c. Joint Requests for Continuances.

2. Appearances by telephonic conference call at any other hearing may only be made with the prior permission of the court, for good cause shown. The court may permit an appearance by telephonic conference call at any time under such conditions and circumstances as the court deems appropriate. A request to make an appearance by telephonic conference call must be communicated to the department's calendar clerk and to all other self-represented parties or attorneys of record not less than two (2) court days before the hearing.

B. Personal Appearance Otherwise Required. A personal appearance is required for all other hearings and proceedings.

C. Reporting. All hearings and proceedings involving an appearance by telephonic conference call shall be reported to the same extent and in the same manner as if the participants had appeared in person. If more than one self-represented party or attorney of record is appearing telephonically in a given hearing or proceeding, each speaker shall identify himself or herself as often as necessary to maintain a good record of the hearing or proceeding.

D. Costs. Costs, if any, incurred in connection with a telephonic appearance shall be borne by the party or attorney making the appearance. However, a party who has obtained a fee waiver prior to a telephonic appearance shall not be required to pay for costs, if any, incurred in connection with the telephonic appearance.

E. Advisement Regarding Appearance by Telephonic Conference Call. Any self-represented party or attorney of record who elects to make an appearance by telephonic conference call under this rule is hereby advised that:

1. A self-represented party or attorney of record has a right to appear personally at the hearing or proceeding, and by giving notice of an intention to appear by telephonic conference call waives that right.

2. A self-represented party or attorney of record appearing by telephonic conference call shall be prepared to provide information (e.g., driver's license number, Social Security number, State Bar number, etc.) sufficient to establish the identity of the self-represented party or attorney to the satisfaction of the court.

3. A self-represented party or attorney of record appearing by telephonic conference call will be unable to visually assess the demeanor of witnesses or other participants at the hearing, and may be unable to visually examine documents and evidence presented at hearing. By electing to appear telephonically, the self-represented party or attorney of record assumes all attendant risks.

Rule 5.3.1 Time for Ex Parte Matters

Ex parte matters will be heard in all Divisions, including the Family Support Division and Madge Bradley Building, beginning at 8:~~45~~ a.m., on Monday through Friday.

Ex parte matters will also be heard on Tuesday and Wednesday afternoons beginning at 1:30 p.m. in the Central, South County, and North County Divisions. The ~~North County~~, East County and Family Support Divisions will also hear ex parte matters beginning at 1:30 p.m. on Monday through Friday.

Additional ex parte hours may be set by the judicial officers of each Division with the concurrence of the Supervising Judge of the Family Law Courts. Notice of such additional ex parte hours will be posted in each of the Divisions of the Court.

A judicial officer of any Division of the Family Court may hear an emergency ex parte request at any time that the business of the Court permits during its normal business hours.

Ex parte requests will generally be heard and determined in open court and on the record except when, in the discretion of the judicial officer, such hearing would more properly be held in chambers ~~a semi-private setting~~ and off the record.

Rule 5.5.1 Time for Service and Filing of Papers

Absent an order shortening time, all moving, opposing, and reply papers, as well as orders to show cause, must be filed and served in compliance with Code of Civil Procedure section 1005, subdivision (b). If an FCS appointment has been set, all ~~moving~~ papers for the mediator's review must be served in compliance with Local Rule 5.10.3(G) ~~at least 10 calendar days prior to the FCS date. Conformed copies of all papers must also be provided to the opposing party or their counsel prior to the hearing.~~

Rule 5.5.8 Companion Matters

[add final paragraph as follows]:

Ex parte leave of court must be obtained prior to filing a companion matter to a hearing that has been specially set by the Court (i.e. a hearing that is scheduled to take more than 40 minutes of court time).

Rule 5.7.1 Short Cause Trials

A. Time Limit

Short cause trials may not exceed ~~3-5~~ hours including time for the judge to review the file, read the trial briefs, conduct chambers conferences and issue a ruling. Cases that exceed the ~~3-5-~~

hour time limit may result in a mistrial and be set for a Case Management Conference at which time the matter will be set for a long cause trial.

Rule 5.8.1 Long Cause Trials

A. Time Limit

~~A long cause trial is defined as any trial estimated as requiring more than three hours of court time.~~ **Any trial that is not a short cause trial is a long cause trial.**

Rule 5.10.3 Mediation at Family Court Services (FCS)

D. Initiating Family Court Service Mediation. ~~4.~~ If a custody/visitation hearing is pending, the moving party must file a completed FCS Initial Screening Form with the moving papers. The business office will assign both a hearing date and an FCS appointment and insert both dates on the custody/visitation moving papers. Both parties are required to attend and participate in the FCS appointment. If the moving papers contain no FCS appointment and the responding party determines that a custody or visitation dispute exists, the responding party will schedule the earliest possible FCS mediation appointment and promptly notify the moving party of the time, date and place.

~~**2. No Custody/Visitation Hearing Pending (self-initiated mediation).** If there is no custody/visitation hearing pending, a party may request an FCS appointment to address disputed issues of child custody or visitation by contacting FCS directly. The party scheduling the appointment is responsible for notifying the other party of the date, time and place of the appointment. This is a voluntary process and participation is not mandatory.~~

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F. Resolution of Dispute Before Mediation; Cancellation or Rescheduling of Appointment; Sanctions.

1. Cancellation. Parties and their attorneys are encouraged to try to resolve child custody/visitation disputes with the opposing party/attorney before the mediation appointment and the Court hearing. If the disputed custody/visitation issue is resolved prior to the Family Court Service mediation appointment, the party/attorney who scheduled the mediation must promptly notify the opposing party/attorney and call FCS to cancel the appointment.

2. Rescheduling of Mediation. Parties may reschedule by stipulation the FCS mediation appointment **once by stipulation by giving notice to FCS at least 2 court days** ~~no later than 1 week~~ prior to the appointment date. Other requests to reschedule a mediation appointment require court approval. The requesting party must notify FCS of the scheduling change **and provide FCS with a copy of the court order granting the scheduling change.**

3. Sanctions. Failure to cancel or reschedule an appointment at least 2 court days before the appointment or failure to attend and participate in an FCS appointment may subject the party to monetary sanctions of up to \$1,500.

G. Submitting Mediation Data Sheet, Writings and Other Materials.

1. The Mediation Data Sheet. At or before the scheduled mediation session, each party must submit a completed Family Court Services Mediation Data Sheet to the office where the mediation is scheduled. No attachments are permitted to the Mediation Data Sheet. Blank Mediation Data Sheets may be obtained from either the business office or any FCS office.

2. Service of Writings and Other Materials. ~~Prior to the mediation conference, The parties, or their attorneys, may provide FCS with writings and other materials, including declarations, letters or other documents. Absent court order to the contrary FCS will not accept these, for the mediator's review so long as the writings and other materials unless they have been served on the opposing party or their attorney and a Proof of Service is attached.~~ are served in accordance with this Rule.

a. Service on FCS. All writings and other materials for the mediator's review must be provided to FCS prior to the start of the mediation session. FCS will not accept the writings and other materials unless the submitting party completes all the following:

i. Serves the writings and other materials on the opposing party in accordance with this Rule,

ii. Provides notice to the opposing party of the writings and materials to be submitted to FCS,

iii. Provides FCS with a copy of the Proof of Service and notice.

~~a-b.~~ **b.** Service by Moving Party on the Opposing Party. The following constitutes proper service by the moving party on the issue of child custody and visitation: if personally served, at least 10 ~~calendar~~ 9 court days before the mediation conference; ~~or~~ if served by mail, the required 9 court day period is increased by 5 calendar days ~~15 calendar days~~ if mailed within the State of California, ~~20~~ 10 calendar days if mailed outside California but within the continental United States, ~~or 30~~ and 20 calendar days if mailed outside the continental United States.

~~b-c.~~ **c. Service by Responding Party.** The following constitutes proper service by the responding party on the issue of child custody and visitation: if personally served, at least 2 ~~court~~ calendar days before the mediation conference; ~~or~~ if served by mail, the required 2 court day period is increased by 5 calendar days ~~7 calendar days~~ if mailed within the State of California, 10 12 calendar days if mailed outside California but within the continental United States, and 22 20 calendar days if mailed outside the continental United States.

d. Expedited Mediation. There shall be no writings or other materials submitted to FCS for the mediator's review absent court order.

3. Documents Requested by FCS. FCS may request the parties to submit additional documents for consideration. Copies of the documents must be provided to the other party concurrently with the submission to FCS.

H. Consultation Between Attorneys and Mediator.

If both parties are represented by attorneys and the attorneys want to confer with the mediator prior to or after the mediation conference, they may schedule a time that is mutually agreeable to the attorneys and the mediator. The mediator will not meet with one attorney unless the opposing attorney is available in person or by telephone. ~~The mediator may have ex parte contact with either attorney or party at any time during the mediation and/or recommendation process to obtain necessary information. Neither a party nor an attorney may contact the mediator, except upon request of the mediator, unless the other party or attorney is present in person or by phone. If, during the course of the mediation, a party by oral communication with the mediator raises issues or allegation which can influence the mediator, the mediator will give the other party an opportunity~~

~~to respond before completing his or her report. If one attorney refuses to meet with the mediator, the other attorney may meet individually with the mediator after obtaining an ex parte order.~~

Communications between mediators, parties, attorneys, including minors' counsel, shall be governed by the provisions of Family Code sections 216 and 1818.

I. Telephone Conference. If an in-person meeting with a mediator at FCS is not feasible, such as when one party resides outside the County of San Diego, a conference will be conducted by telephone. The parties or their counsel must advise the FCS calendar clerk of the need for telephone mediation and provide appropriate telephone numbers. ~~The Family Court mediator will call the telephone participant collect at the time of the conference. If represented, it is the attorney's responsibility to advise his or her client to accept this collect call.~~ A Mediation Data Sheet must be submitted by each party even though the meeting is to be conducted by telephone. **The party appearing telephonically shall call FCS at the number listed in Appendix A for the appropriate FCS division at the time designated for the mediation.** A Mediation Data Sheet must be submitted by each party even though the meeting is to be conducted by telephone.

Paragraphs J-K unchanged.

M. Written Report or Recommendation by FCS Mediator. The FCS mediator's report will be considered by the court at the time of the trial or hearing, subject to a party's right to cross-examine the mediator at that trial or hearing. FCS mediators are employees of the Superior Court. Litigants desiring the testimony of a mediator at trial or hearing should first contact that mediator to determine availability on the desired date. A subpoena must then be served upon the mediator at least ten days in advance of the hearing, with fees deposited, as required by Government Code sections 68097, 68097.1, and 68097.2. The Court will not authorize depositions of mediators absent a showing of extraordinary good cause, such as prolonged unavailability of the mediator on or about the time of trial.

Certain privileges attach to Family Court Services files, and to documents in those files. As such, judicial officers will not order the release of any such documents absent prior in camera review. A litigant desiring such review shall serve a subpoena duces tecum upon the mediator for the documents, at least 15 days before the trial or hearing, and if an objection is received, shall schedule a motion to compel or Order to Show Cause to obtain the in camera review.

Rule 5.10.4 Custody/Psychological Evaluations

A custody evaluation is a process by which a mental health professional uses appropriate professional techniques to gather information. The mental health professional uses this information to formulate a recommendation that is submitted to the Court. ~~Courts order child custody evaluations, investigations, and assessments to assist them in determining the health, safety, welfare, and best interest of the child with regard to disputed custody and visitation issues. California Rules of Court, rules 5.210—5.230, which require local courts to implement this rule, affect both court-connected and private child custody evaluators appointed under Family Code section 3111, Evidence Code section 730 or Code of Civil Procedure section 2032.~~

The court may order either a partial evaluation or a full evaluation. A "partial evaluation, investigation or assessment" is an examination of the health, safety, welfare, and best interest of the child. It is limited by court order in either time or scope. A partial evaluation may address a single

issue, such as: the level of the alleged substance abuse, domestic violence, mental instability/illness of a parent; with whom is the child most closely bonded; which parent is most likely to facilitate a positive and meaningful relationship between the child and the other parent; the child's preference and basis therefor; the effect upon the child in a "move away" situation. Partial evaluations will include contact with both parents to obtain information regarding the referring issue or question. A "full evaluation, investigation or assessment" is a comprehensive examination of the health, safety, welfare, and best interest of the child.

"Evaluation," "investigation," and "assessment" are synonymous terms as used in this rule. All evaluations will include those requirements set forth in the California Rules of Court, rule 1257.3(e).

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G. Consultation Between Attorneys and Evaluator.

If both parties are represented by attorneys and the attorneys want to confer with the evaluator, they may schedule a time that is agreeable to the attorneys and the evaluator. The evaluator will not meet with one attorney unless the opposing attorney is available in person or by telephone. ~~The evaluator may have ex parte contact with either attorney or party at any time in the evaluation process to obtain necessary information. Neither party or attorney may contact the mediator, except upon request of the mediator, unless the other party or attorney is present in person or by telephone. If, during the course of the evaluation, a party by oral communications with the evaluator raises issues or allegations which can influence the evaluation, the evaluator will give the other party an opportunity to respond before completing his or her report.~~

Communications between evaluators, parties, attorneys, including minors' counsel, shall be governed by the provisions of Family Code sections 216 and 1818.

~~If one attorney refuses or is unwilling to meet with the evaluator, the other attorney may meet individually with the evaluator pursuant to court order upon ex parte application.~~

Rule 5.11.2 Preparation of Orders and Judgments

- A. Counsel for the moving party must prepare a formal order or judgment unless the Court orders the other party to do so. (The party preparing the original proposed order or judgment is referred to in this Rule as the "preparing party".) Findings and Orders After Hearing must be prepared on brown paper and judgments must be on pink paper. The order or judgment must be prepared so that at least 2 lines of text appear on the page which will have the judge's signature, and no text may appear after the judge's signature. **The "Agreement" or "Recommendation" portion of a Family Court Services report may be attached as an exhibit to an order or judgment when the court has adopted the listed provisions as its order. No other portion of the FCS report shall be attached to the order or judgment.**

5.12.7 Appointment of Counsel for Children

- F. Rights and Obligations Upon Appointment of Counsel

4. Without notice, the child's counsel may communicate, either by telephone or by letter, with FCS and/or with any evaluator, including psychological evaluators **as allowed by Family Code section 3151 (c) (5), or as expressly authorized by the court.** However, with respect to other written documents (i.e., from third parties, agencies or institutions) that are provided by the child's counsel to FCS or an evaluator, the child's counsel is subject to the same local rules regarding psychological evaluations and FCS communications as are other counsel, as set forth in Rules 5.10.3 and 5.10.4.

DIVISION VI – JUVENILE

Rule 6.3.4 Standards of Representation

(a) * * *

(b) Relevant Laws and Programs

All attorneys practicing in dependency proceedings must have a working knowledge of the following statutes and rules, as well as the cases interpreting and applying them:

1. * * *

2. CRC 39-39.2A **37-38.6**, 1400-1499**5, Appendix, Division I (Standards of Judicial Administration), sections 24, 24.5;**

Rule 6.5.1 Informing the Court of Other Interests of a Dependent Child

(a) * * *

(b) 1. Notice to the court may be given by filing Judicial Council form JV-180 (~~Modification Petition Attachment~~ **Request to Change Court Order**), by filing a declaration, or, in the case of an individual who is not a party to the action, by sending a signed letter addressed to the court.

(Adopted Effective 1/1/97; Renumbered 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006; **Amended Effective 1/1/2007**)

Rule 6.6.4

Disclosure of Dependency Records to Persons and Agencies Not Designated in WIC § 827 - Petition to View Records (JUV-4) Required

(a) In addition to the persons and agencies designated in WIC § 827, the following may have access to dependency records and/or obtain photocopies of dependency records without a prior court order, subject to the conditions specified, on the basis that [1] disclosure will be in the best interest of the child whose records are sought and [2] the information contained in those records is necessary and relevant to:

- a juvenile dependency or delinquency proceeding;
- a civil or criminal investigation or proceeding;
- a proceeding involving child custody or visitation;

a proceeding involving adoption, guardianship, or emancipation of a minor;
an action to establish paternity;
an administrative proceeding regarding foster home licensure;
a proceeding involving probate or conservatorship; or
a proceeding involving domestic violence.

1. – 14. * * *

~~15. Members of the San Diego County Grand Jury.~~ And renumber subsequent paragraphs.

Rule 6.9.6 Requirements for Noticed Motions

f. Abandonment of Motions: Any party intending to abandon a motion already filed must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard, and must also notify the clerk immediately if the case is disposed of by plea prior to the hearing or if the proceedings are suspended **because the minor is found not to be competent**~~pursuant to Penal Code section 1368.~~

Rule 6.9.13 Initial Health Screening

Prior medical authorization will not be required for the initial health screening of minors at Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. Initial health screenings must be performed within ~~72~~ **96** hours of detention and will include a physical examination, laboratory tests, immunizations, and X-rays. The Probation Department will attempt to obtain parental consent for medical care. If such consent cannot be obtained, the Probation Department will seek a court order authorizing medical care. In an emergency situation, medical care may be delivered to minors in detention without parental consent or a court order. (See Welf. & Inst. Code, § 739.)

Reason for proposed change: Make rule consistent with 15 C.C.R. 1432.

NO PROPOSED CHANGES TO DIVISIONS 7 OR 8